

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0364-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
RAMON AMARO,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20061791

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
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PELANDER, Chief Judge.

¶1 In December 2006, a jury found appellant Ramon Amaro guilty of five felonies: two counts of sexual conduct with a minor under the age of fifteen and one count each of continuous sexual abuse of a child, sexual abuse of a minor under the age of fifteen,

and furnishing obscene or harmful items to minors. All but the last offense were alleged and found to be dangerous crimes against children. For continuous sexual abuse of a child, the trial court sentenced Amaro to the maximum sentence of life imprisonment without the possibility of parole for at least thirty-five years. It imposed presumptive sentences totaling 47.5 years on the remaining counts and ordered all five sentences served consecutively. This court affirmed Amaro's convictions and sentences on appeal. *State v. Amaro*, No. 2 CA-CR 2007-0077 (memorandum decision filed May 8, 2008).

¶2 In April 2008, Amaro filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., alleging he had received ineffective assistance of counsel both before and during trial. After holding an evidentiary hearing at which Amaro and his trial counsel both testified, the trial court denied relief in a ten-page minute entry, in which it addressed each of Amaro's claims in detail. With respect to each instance of ineffectiveness asserted, the court found Amaro had not demonstrated counsel's performance fell below an objectively reasonable professional standard, nor had Amaro alleged or shown that he sustained prejudice as a result. *See generally Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985) (colorable claim of ineffective assistance of counsel requires proof of both substandard performance and resulting prejudice). With the present petition, Amaro seeks our review of the trial court's ruling.

¶3 This court reviews a trial court's grant or denial of post-conviction relief only for an abuse of the court's discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). At the hearing the trial court conducted pursuant to Rule 32.8(a), Amaro had the

burden of proving his factual allegations by a preponderance of the evidence. *See* Ariz. R. Crim. P. 32.8(c). Given that Amaro and his trial counsel were the only witnesses who testified and that counsel's testimony supported the trial court's factual findings, the record supports the court's unstated conclusion that Amaro failed to meet his burden of proof under Rule 32.8(c). *See State v. Byers*, 126 Ariz. 139, 141, 613 P.2d 299, 301 (App. 1980) (when testimony of petitioner and his wife was directly contradicted by testimony of defense counsel and prosecutor, evidence "more than sufficient" to support trial court's findings), *overruled on other grounds by State v. Pope*, 130 Ariz. 253, 256, 635 P.2d 846, 849 (1981).

¶4 Except for the additional contention that "the trial court erred in finding that trial counsel provided effective assistance in this case," the assertions and arguments in Amaro's petition for review are predominantly factual in nature and mirror the allegations in his petition for post-conviction relief below. To rule in his favor would require us to disregard the trial court's factual findings, reweigh the testimony and other evidence presented at the evidentiary hearing, and substitute our own factual findings for those made by the trial court. Those are not the proper functions of a reviewing court. "The trial judge is in the best position to evaluate credibility and accuracy, as well as draw inferences, weigh, and balance." *State v. Hoskins*, 199 Ariz. 127, ¶ 97, 14 P.3d 997, 1019 (2000), *quoting State v. Bible*, 175 Ariz. 549, 609, 858 P.2d 1152, 1212 (1993). Consequently, "[w]e do not reweigh the evidence," *State v. Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d 919, 924 (App. 2003), but "defer to the trial court's factual findings that are supported by the record and are not clearly erroneous." *State v. Estrada*, 209 Ariz. 287, ¶ 2, 100 P.3d 452, 453 (App. 2004), *quoting State v. Rosengren*, 199 Ariz. 112, ¶ 9, 14 P.3d 303, 307 (App. 2000). The trial

court, not this court, determines the credibility of witnesses, *State v. Ossana*, 199 Ariz. 459, ¶ 7, 18 P.3d 1258, 1260 (App. 2001), and we defer to its determinations. *State v. Moody*, 208 Ariz. 424, ¶ 81, 94 P.3d 1119, 1144 (2004); *State v. Hughes*, 13 Ariz. App. 391, 392-93, 477 P.2d 265, 266-67 (1970).

¶5 The testimony of Amaro’s trial counsel supplied an evidentiary basis for the trial court’s factual findings, as the court has explained thoroughly in its minute entry, and its factual findings support its legal conclusions. Because we are satisfied with the court’s identification, analysis, and resolution of Amaro’s ineffective assistance claims, we approve and adopt its detailed ruling, which needs no parsing or elaboration. *See generally State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision”).

¶6 Although we grant the petition for review, we find no abuse of the trial court’s discretion and therefore deny relief.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

PHILIP G. ESPINOSA, Judge